

Bail Slip

The Appellant in Crl.R.C. No.458 of 2013 Accused,namely Senthil aged about 25 years S/o.Ganesan in CC .NO.455/11 on the file of the Principal Sessions,Villupuram is directed to be released on bail as per order of this Court dated 05.04.2013 in CRL MP.NO.1/2013 in Crl.R.C. No.458 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.11.2019

DELIVERED ON: 07.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.458 of 2013

Senthil

Petitioner/Appellant/Accused

vs.

The State
represented by
the Inspector of Police
Villupuram West Police Station
Villupuram District

Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 10.08.2012 passed by the Judicial Magistrate No.I, Villupuram in C.C. No.455 of 2011 confirmed by the judgment and order dated 28.02.2013 passed in Crl.A. No.62 of 2012 on the file of the Principal Sessions Court, Villupuram.

For petitioner Mr. R. Sankarasubbu

For respondent Mrs. Kritika Kamal

Govt. Advocate (Crl. Side)

ORDER

This criminal revision is directed against the judgment and order dated 28.02.2013 passed by the Principal Sessions Judge, Villupuram in Crl.A.No.62 of 2012 confirming the judgment and order dated 10.08.2012 passed in C.C.No.455 of 2011 on the file of the Judicial Magistrate No.I, Villupuram.

2 A precis of the facts giving rise to the institution of the instant criminal revision is as follows:

2.1 Nageswari (P.W.1), in her written complaint (Ex.P.1) to the police, has stated that while she and Veeralakshmi (P.W.3), wife of Bharani (P.W.2), who is Nageswari's (P.W.1's) elder brother, were attending to the nature's call in a bush nearby their house around 8.00 p.m. on 06.03.2011, Senthil (accused/petitioner herein), a resident of the same street where Nageswari (P.W.1) lives and who used to frequently quarrel with her, stood beneath a nearby streetlight, lowered his pants and committed acts of exhibitionism and flashing, coupled with hurling invectives at her; on seeing this, she (P.W.1) felt terrified and embarrassed; on getting that information, her brother Bharani (P.W.2) came to the place with Dhanam (P.W.4), wife of Balaraman, Parvathy (P.W.5), wife of Veera Raghavan and others, and upbraided the petitioner; thus, an altercation ensued in which the petitioner attacked Bharani (P.W.2) with a stick indiscriminately and when they tried to apprehend him, he (petitioner) went into his house, returned with a knife, intimidated them and fled; Bharani (P.W.2) was taken to the Government Hospital, Villupuram, where, he was examined by Dr. Raj (P.W.7) at 8.45 a.m. on 07.03.2011, who made entries in the accident register (Ex.P.3) and admitted him as an in-patient; x-ray was taken and it was found that he (Bharani-P.W.2) suffered fracture in his left hand; he (Dr. Raj-P.W.7) opined that the injury sustained by Bharani (P.W.2) was grievous in nature.

2.2 On the written complaint (Ex.P.1) lodged by Nageswari (P.W.1), the respondent police registered a case in Cr. No.153 of 2011 on 07.03.2011 at 2.00 p.m. under Section 294 (a & b), 323 and 506(II) IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and prepared the printed FIR (Ex.P.4), which reached the jurisdictional Magistrate on the same day at 6.30 p.m., as could be seen from the endorsement thereon.

2.3 Investigation of the case was taken over by Selvaraj (P.W.8), who went to the place of occurrence and prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.5). After receiving the doctor's opinion that the injuries sustained by Bharani (P.W.2) are grievous in nature, an alteration report (Ex.P.6) was filed substituting Section 323 with Section 325 IPC.

2.4 After completing the investigation, the police filed a final report in C.C.No.455 of 2011 before the Judicial Magistrate No.I, Villupuram, for the offences under Sections 294 (b), 325 and 506(II) IPC read with Section 4 of the Tamil Nadu Prohibition Harassment of Woman Act against the petitioner.

2.5 On appearance of the petitioner, the provisions of Section 207 Cr.P.C. were complied with and charges for the offences stated in paragraph 2.4, supra, were framed against the petitioner. When questioned, the petitioner pleaded "not guilty".

2.6 To prove the case, the prosecution examined eight witnesses and marked six documents.

2.7 When the petitioner was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the petitioner nor any document marked.

2.8 After considering the evidence on record and hearing either side, the Trial Court, vide judgment and order dated 10.08.2012 in C.C. No.455 of 2011, convicted and sentenced the petitioner as under:

Provisions under which convicted	Sentence
S. 294(a) IPC	3 months simple imprisonment
S. 294(b) IPC	3 months simple imprisonment
S. 325 IPC	2 years simple imprisonment and fine of Rs.500/-, in default to undergo 3 months simple imprisonment

Provisions under which convicted	Sentence
S. 506(II) IPC	2 years simple imprisonment

Provisions under which convicted	Sentence
S. 4 of the T.N. Prohibition of Harassment of Woman Act	2 years simple imprisonment

The aforesaid sentences were ordered to run concurrently.

2.9 The appeal in Crl.A. No.62 of 2012 preferred by the petitioner was dismissed by the Principal Sessions Court, Villupuram on 28.02.2013.

2.10 Calling into question the legality and validity of the concurrent findings of fact arrived at by the two Courts below, the accused has preferred the instant criminal revision invoking Section 397 r/w Section 401 Cr.P.C.

3 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja vs. CBI¹, has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record. For better appreciation, the relevant portion of the judgment is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only

1 (2017) 14 SCC 809

two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

5 While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.²:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

(emphasis supplied)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 :

AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

6 The aforesaid legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar*³, wherein, the following question of law was formulated :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

7 The answer of the Supreme Court to the aforesaid question is as under :

"19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH* [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8 Coming to the case at hand, Mr. Sankarasubbu, learned counsel for the petitioner formulated the following points:

i Though the occurrence is said to have taken place on 06.03.2011 at 8.00 p.m., the complaint (Ex.P.1) in this case was lodged only on 07.03.2011 at 2.00 p.m. and thus, there is an enormous delay in the registration of the F.I.R.;

ii Nageswari (P.W.1) and Veeeralakshmi (P.W.3) ought not to have remained in the place after the alleged flashing by the petitioner and should have left the place at once;

iii The police had failed to recover the stick and knife that were allegedly used by the petitioner;

iv The place of occurrence is near the house of the petitioner and ergo, it is the womenfolk who are the aggressors and not the petitioner;

v. Dr. Raj (P.W.7), in his evidence has stated that when he examined Bharani (P.W.2), he (P.W.2) told him (P.W.7) that he (P.W.2) was attacked by a known person at 4.00 a.m. which timing does not tally with the timing given by the prosecution; and

vi. Even according to Dhanam (P.W.4), she was only a hearsay witness and not an eyewitness.

9 Per contra, the learned Government Advocate appearing for the respondent State refuted the contentions put forth by the learned counsel for the petitioner.

10 Nageswari (P.W.1), in her evidence, has stated that the petitioner used to quarrel with her very frequently and she knows the petitioner who lives in the same street; on

06.03.2011, around 8.00 p.m., while she and her sister-in-law Veeralakshmi (P.W.3) were attending to the nature's call in a bush near her house, the petitioner removed his pants and showed his private part at them; he also abused her by calling her a whore; she called her brother (P.W.2) over phone and told him as to what he (petitioner) did; his brother (P.W.2) came there and questioned the petitioner; the petitioner took a stick that was found nearby and attacked her brother (P.W.2) and when he (P.W.2) attempted to ward the attack, he (P.W.2) suffered injuries on his head and back; the petitioner ran into his house and brought a huge knife and threatened everyone there saying that if anyone comes near him, he would kill him; her brother Bharani (P.W.2) was taken to the hospital; on the next day, she (P.W.1) went to the police station and gave the complaint (Ex.P.1).

11 In the cross-examination, Nageswari (P.W.1) has admitted that there is no toilet in their house and only a very few houses in their street have toilet; the petitioner used to frequently quarrel with her; when she was going towards the bush, she earlier saw the petitioner urinating; she admitted her brother in the hospital and then only gave the complaint (Ex.P.1). Except suggesting to her that her brother Bharani (P.W.2) had fallen from a bullock cart and sustained the injuries in question, which suggestion she denied, the defence was not able to make any serious dent in her evidence.

12 Bharani (P.W.2), in his evidence, has stated that on 06.03.2011, around 8.00 p.m., his wife Veeralakshmi (P.W.3) and his younger sister (P.W.1) had gone to attend the nature's call; at that time, his sister (P.W.1) called him and told him as to what the petitioner did; so, he went to the spot and questioned the petitioner; the petitioner attacked him with a stick and intimidated him; then, the petitioner went inside, brought a knife, intimidated them and ran away; thereafter, he (P.W.2) was admitted in the hospital. In the cross-examination, he has stated, where all, the petitioner attacked him. It was suggested to him (P.W.2) that on account of previous enmity, a false case has been put on the petitioner, which suggestion, he has denied.

13 Veeralakshmi (P.W.3), sister-in-law of Nageswari (P.W.1) and wife of Bharani (P.W.2), has corroborated the evidence of Nageswari (P.W.1).

14 Coming to the contention of Mr. Sankarasubbu that there is enormous delay in the registration of the FIR, the Supreme Court, in Ravinder Kumar and another vs. State of Punjab⁴, has held in unequivocal terms that delay in registration of FIR is not fatal in all cases and that even registration of FIR with promptitude does not guarantee genuineness of the version contained in the complaint. The relevant paragraph from the said judgment is usefully extracted hereunder:

"13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. (emphasis supplied)

Thus, from the aforesaid judgment, it can be discerned that truth or falsity of the contents of a complaint does not depend upon the time taken to lodge the complaint, but, upon facts and circumstances of each case.

15 In the case at hand, the incident had taken place in the night hours, after which, Bharani (P.W.2) was admitted in the hospital and only thereafter, Nageswari (P.W.1) had gone to the police station and given the complaint (Ex.P.1).

16 Mr. Sankarasubbu built upon the aforesaid argument contending that even in the complaint (Ex.P.1), Nageswari (P.W.1) has stated that only at the instance of the other villagers, she decided to lodge the complaint (Ex.P.1) which

4 (2001) 7 SCC 690

shows that the complaint was not spontaneous, but, was deliberated upon and then given.

17 This Court went through the complaint (Ex.P.1), wherein, Nageswari (P.W.1) has stated that she felt very embarrassed and ashamed to describe the act of the petitioner and that only when the others told her that she should not leave it at that, she garnered courage to lodge the complaint (Ex.P.1). In a case of this nature, one should understand the predicament of a lady hailing from the countryside. In the light of the facts obtaining in the case at hand, this Court is of the view that the delay in registration of the FIR is not inordinate for this Court to hold that it shakes the very foundation of the prosecution. Immediately after the incident, the villagefolk would have been busy in connection with the admission of Bharani (P.W.2), who had suffered fracture in his hand and the explanation given by Nageswari (P.W.1) cannot be outrightly rejected.

18 As regards non-recovery of the stick and knife allegedly used by the petitioner, pertinent it is to point that the same, by itself, cannot be fatal to the case of the prosecution, because, recovery of material objects falls within the domain of the police investigation over which the victims have no role to play.

19 Coming to the alleged statement of Bharani (P.W.2) to Dr. Raj (P.W.7), it is to be noted that it is only a previous statement and the same should have been confronted to Bharani (P.W.2) in terms of Section 145 of the Evidence Act, which has not been done in this case. Bharani (P.W.2) has stated that the incident took place at 8.00 p.m. on 06.03.2011 and that thereafter, he was taken to the hospital. This Court should not lose sight of the fact that the incident had taken place in a far-flung hamlet from which the district hospital is indeed far away.

20 The next contention of the learned counsel for the petitioner that it is only the women who were aggressors cannot be countenanced for the reason that they had gone to a bush in a secluded area near their house for defecating, which should be considered in conjunction with the answer given by Nageswari (P.W.1) in the cross-examination that their house did not have toilet.

21 Coming to the contention of Mr. Sankarasubbu that Dhanam (P.W.4) was only a hearsay witness and not an eyewitness, it is true that the only eyewitnesses to the account are Nageswari (P.W.1) and Veeralakshmi (P.W.3) and Dhanam (P.W.4) came subsequently along with Bharani (P.W.2), by which time, the flashings were over.

22 The contention of the learned counsel for the petitioner that Nageswari (P.W.1) and Veeralakshmi (P.W.3) should have left the place immediately after the incident deserves to be stated only to be rejected, because, the evidence of Nageswari (P.W.1) shows that while they were easing their burden, the petitioner was flashing. In such a scenario, one cannot expect the women to leave the place abruptly. Nageswari (P.W.1) has stated that she was shellshocked and embarrassed on seeing the acts committed by the petitioner and hence, she called her brother Bharani (P.W.2) for help. In the opinion of this Court, there is absolutely nothing unnatural in the conduct of Nageswari (P.W.1), for, any prudent lady, especially during such night hours, would tend to take the aid of a male to handle such a situation.

23 In view of the foregoing discussion, this Court does not find any reason whatsoever to interfere with the well merited judgments and orders passed by the Courts below, convicting and sentencing the petitioner as detailed in paragraph 2.8, supra, and accordingly, the conviction and sentence imposed on the petitioner by the Courts below are confirmed.

Resultantly, this criminal revision fails and is accordingly dismissed as being devoid of any merit. The trial Court is directed to secure the petitioner and commit him to prison to serve out the sentence.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Villupuram West Police Station
Villupuram District

2 The Judicial Magistrate No.I
Villupuram

3 The Principal Sessions Court
Villupuram

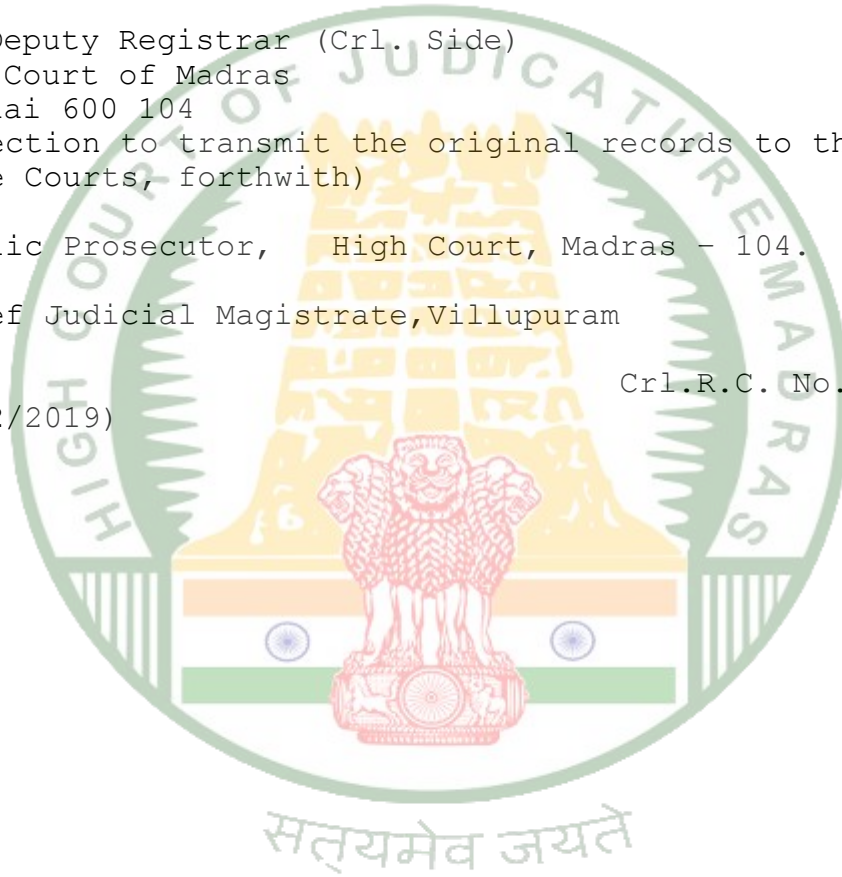
4 The Deputy Registrar (Crl. Side)
High Court of Madras
Chennai 600 104
(with direction to transmit the original records to the
respective Courts, forthwith)

5.The Public Prosecutor, High Court, Madras - 104.

6.The Chief Judicial Magistrate,Villupuram

Crl.R.C. No.458 of 2013

A.SK(17/12/2019)



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